

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

City of Rochester,

v.

Civil No. 08-cv-263-JL

Rennelda Trust et al.

O R D E R

On September 29, 2008, the court ordered the pro se defendants to show cause by October 13, 2008 why this action should not be remanded to Strafford County Superior Court for lack of federal subject-matter jurisdiction. This court noted that, while the defendants had removed the case here on the basis of "federal civil rights claims" asserted in their counterclaim, that did not create federal subject-matter jurisdiction. See Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 830-33 (2002). As the Supreme Court explained in that case, because federal jurisdiction exists by statute over "actions arising under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, "[i]t follows that a counterclaim--which appears as part of the defendant's answer, not as part of the plaintiff's complaint--cannot serve as the basis for 'arising under' jurisdiction." 535 U.S. at 831.

The defendants then asked for an extension of time to respond to the show cause order; over the plaintiff's objection,

that request was granted in part, giving the defendants until October 29, 2008, but warning that no further continuances would be granted. When that date arrived, the defendants nevertheless asked for another continuance. That motion (document no. 25) is DENIED. While the court is sympathetic to the defendants' claimed "health issues," from now until kingdom come would not give them enough time to show subject-matter jurisdiction, because, as just explained, none exists. The defendants point out in their second motion for an extension that, when one of them recently brought an unrelated suit in state court against the City of Rochester, it was removed here, Blaisdell v. City of Rochester, No. 07-390-JL; but that was done on the basis of the claims for federal constitutional violations set forth in the complaint, not in a counterclaim, which makes all the difference. This case is REMANDED to the Strafford County Superior Court. Any other pending motions are TERMINATED.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: October 29, 2008

cc: Catherine M. Constanzo, Esq.
Danford J. Wensley, Esq.
George Blaisdell, Esq.
Clay Phalen, Esq.